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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

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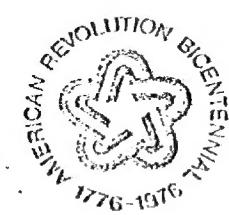
Dr. David Elliott
 Senior Staff
 National Security Council
 Washington, D.C. 20506

Dear Dr. Elliott:

This letter forwards our comments on the State Department draft bill to implement the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, which entered into force on March 26, 1975. The Convention requires that each party undertake never to acquire or retain biological agents or toxins which have no justification for peaceful purposes, and further requires that each party destroy or divert to peaceful purposes all such agents or toxins, as well as delivery systems, within nine months of entry into force. Implementing legislation is required by Article IV of the Convention which obligates the United States to take any necessary measures, in accordance with its constitutional processes, to ensure that the activities prohibited by the Convention do not take place within its territory, under its jurisdiction, or under its control anywhere.

The Central Intelligence Agency, of course, has no objection to implementation of this Convention. Indeed, this Agency fully supports the decisions of the President more than five years ago to unilaterally renounce the use of biological methods of warfare and to order destruction of existing biological weapons. We do, however, suggest that some changes in the language of the proposed bill be considered.

The draft bill is intended, in the words of the draft letters of transmittal to the President of the Senate and the Speaker of the House, to implement the Convention. Yet the definition of biological weapon used in the portion of the draft bill which imposes severe criminal penalties differs substantially from the language of the Convention. Article I of the Convention, in essence, defines biological weapons as "[m]icrobial or other biological agents, or toxins ... of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes." [emphasis added] Section 175(a) of the draft bill,



on the other hand, defines such weapons as organisms, agents or toxins "of a type harmful to human beings, animals or plants, and intended for use in armed conflict or any other hostile purpose." [emphasis added]

The definition of biological weapon in section 175(a) of the draft bill does not clarify the language of the Convention, but merely substitutes new language which differs materially from the language of the Convention. This shift raises questions as to whether section 175(a) indeed implements the Convention; in some respects it may go beyond and other respects fall short of the requirements of the Convention. It is our understanding that the element of intent was introduced into the definition of biological weapon in section 175(a) in order to satisfy the requirements of a criminal statute. We agree that the inclusion of the intent element is appropriate where criminal sanctions such as those in section 176(a) are imposed. We believe, however, that ambiguity results from inclusion of the intent element in the general definition of biological weapon. We suggest that the element of intent be inserted only in the section which imposes criminal sanctions, namely section 176(a) and that the definitional section conform to the precise wording of the Convention in defining biological weapons.

Moreover, the use of the phrase "other hostile purpose" in section 175(a) of the draft bill could be broadly interpreted to cover activities beyond the purview of the Convention, which was to eliminate the possibility of the use of biological weapons in warfare. Therefore, we suggest that at a minimum this phrase be modified to "any other similar purpose" or "any other related purpose" or be eliminated altogether.

Thus, we believe it would be preferable for section 175(a) to read as follows: "any microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes" Section 176(a), in our view, should read: "... knowingly develops, produces, possesses, stockpiles, transfers, acquires, or retains any biological weapon intended for use in armed conflict or any other related purpose, within or without the territory" [emphasis added] The extended definitions in sections 176(b) and (c) could then be eliminated and replaced by the phrase "biological weapon."

In conclusion, we further note that the severe criminal penalties imposed by section 176(a), whatever their merit from a policy standpoint, apparently go far beyond what is necessary to fulfill the obligations of the United States under the Convention. The unilateral implementation of the Convention by the President

mentioned in the second paragraph was considered sufficient to ensure compliance by the United States Government, and legislation or further administrative action is necessary only to prohibit private activity which would defeat the central objectives of the Convention, see page 4 of the Report of the Secretary of State, Ex. Doc. 92-Q. The provisions of sections 176(b) and (c), relating to enjoinder, seizure and forfeiture, come close to satisfying the obligations of the United States with respect to private activity.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

cc: OMB
Department of State

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